84-1798

No.

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IN THE

Supreme Court of the United States

APRIL TERM, 1985

FREDERICK L. COLLINS,
Petitioner

v.

ANNDEP STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Whether a shipowner wrongfully withheld the earned wages of a seaman when, after discharging him, the shipowner failed to deliver the wages to the seaman, the United States Consul, or in an escrow, and subsequently deducted a portion of those wages as reimbursement of a non-obligation transportation expense incurred more than four months after the seaman had been discharged and without his consent?

2. Whether a seaman whose earned wages were withheld for more than four months by a shipowner without sufficient cause and without his consent is entitled to delay wages within the meaning of 46 U.S.C. 10313 (g)?

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No.

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ANNDEP STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Sacks & Basch, Esquires, on behalf of Frederick L. Collins, petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISIONS BELOW

The judgment order of the Court of Appeals for the Third Circuit (App. A) summarily affirming the decision of the District Court and denying petitioner's motion for a hearing *en banc* (App. B) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1985. A motion for hearing *en banc* was denied on March 21, 1985. The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

46 U.S.C. 10313 (f), provides:

> "At the end of the voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier."

46U.S.C. 10313 (g), provides:

> "When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman two days' wages for each day payment is delayed."

46U.S.C. 10318 (f), provides:

> "A deduction from wages of the seaman is permitted only if the deductions appear in the account of the seaman required to be delivered under Section 10310 of this Title, except for matters arising after delivery of the account in which case a supplementary account is required. During a voyage, the master shall report in the official logbook the matters about which the deductions are to be made with the amounts of the deduction. The entries shall be made as the matters occur."

STATEMENT

1. Petitioner, Frederick L. Collins, is a seaman and a member of the United States Merchant Marine.

2. On December 25, 1981, the petitioner, Frederick L. Collins, was duly engaged to serve as a seaman aboard the TT "Williamsburg" in the capacity of General Steward Utility under agreement, to be paid regular monthly wages of $935.40, plus bonus, overtime and found.

3. On March 1, 1982, while the TT "Williamsburg" was in the foreign port of Port Armuelles, Panama, petitioner, Frederick L. Collins, went ashore to shop. The petitioner was arrested by Panamanian authorities at the pier entrance gate as he made his way back to the vessel, resulting in his failure to rejoin his vessel.

4. Petitioner was thereafter officially logged by the Master of the vessel for failure to rejoin the vessel. Petitioner was officially discharged from the TT "Williamsburg" on March 1, 1982 for failure to rejoin the vessel. After petitioner's discharge, the Captain notified a Panamanian agent for the shipowner, the United States Consul and headquarters of the shipowner in New York of petitioner's arrest and detention by Panamanian authorities.

5. Upon the discharge of the petitioner from the vessel on March 1, 1982, the Captain prepared a voucher and mailed it to the respondent. The purpose of the voucher was to indicate the net wages due the petitioner and facilitate the payment of his wages.

6. The Captain did not forward the wages to the Consul when he advised the Consul of the discharge of the petitioner. There was no currency problem since Panama uses American dollars.

7. The respondent had possession of petitioner's permanent address in the United States and could have forwarded the wages due. In fact, when partial payment of the wages was subsequently made more than four months later, it was sent to the same address.

8. On July 14, 1982, the petitioner, Frederick L. Collins, was released from the Panamanian jail in which he was detained. On July 15, 1982, the agent for the respondent shipping company took petitioner to the airport and gave him an airline ticket for San Francisco. The airline ticket was purchased by the respondent. The petitioner was neither told that he would be responsible for his return ticket nor that the price of the ticket was being deducted from his wages. Petitioner's consent was not requested. Panama operates on United States currency and the petitioner could have easily purchased the airline ticket for himself or secured other means of transportation back to the United States given the ocean traffic between the two countries.

9. At the time of petitioner's discharge from the TT "Williamsburg", the respondent shipowner owed $876.00 in wages to petitioner. On July 23, 1982, respondent mailed a check for 227.10 to petitioner's home. This check represented the balance of wages owed to petitioner after respondent unilaterally

claimed $648.90 as a deduction for repatrition expenses.

10. Petitioner brought suit against the respondent shipowner for the unlawful withholding of his wages and for double wages provided as penalty under Section 596 of Title 46 of the United States Code, as partially revised in 1983.

11. Petitioner is claiming from the respondent the amount of $648.90 wrongfully withheld from his pay, along with double wages from March 1, 1982 until December 14, 1982, the date on which petitioner's wages were tendered in full with the U.S. District Court for the Eastern District of Pennsylvania.

12. A non-jury trial on these same issues was held before the Honorable John Fullam on November 14, 1983. At the close of testimony on November 14, 1983, Judge Fullam left the record open for the submission of additional evidence in the form of depositions from the respective parties. On June 21, 1984, Judge Fullam prepared a final Opinion and Order which was filed on June 29,1984. In his Opinion and Order, Judge Fullam found in favor of respondent, stating that respondent acted reasonably with regard to the prompt payment of petitioner's wages and acted properly in charging the petitioner for the cost of his repatriation.

13. On July 12, 1984, an appeal was timely taken by the petitioner to the United States Court of Appeals for the Third Circuit.

14. The Third Circuit, without an opinion, affirmed the decision of the District Court. The Third Circuit further declined Mr. Collins' request for a hearing *en banc*.

REASONS FOR GRANTING THE PETITION

This case presents an issue of great national importance and, in particular, of great concern to the American sailor. This Court has long held that sailors are "wards of admiralty". *The Arizona v. Anelich,* 298 U.S. 110, (1936). Ever since the decision in *The Arizona,* it has been a matter of national policy and of American jurisprudence to treat sailors as a protected class. The rationale for this protective policy is based on the indispensable role sailors play to the national defense. Our sailors provide the unique service as the lifeline of our international communications with

the rest of the shipping world. The role and input of our sailors permeate every facet of our national economy. In 1984, American sailors were involved in the transportation of 29.14 million deadweight tons of goods on American ships alone. This figure placed the United States second to only Japan in the world among the non-flag of convenience countries. See, *Lloyd's Register of Shipping*, 5, (1984).

A seaman's claim for wages is highly favored by the courts. *The City of Norwich*, 279 F. 687 (C.A. 2 N.Y. 1922). In fact, a seaman's claim for wages has been characterized as "a sacred claim." See, *The Samuel Little*, 221 F. 308 (C.A. 2 N.Y. 1915).

This Court left no doubt in its duty to promote the policy of the protection of seamen when it held that whenever possible the Court should construe any ambiguities either in law or in fact in favor of the seaman. Cf. *Warren v. United States*, 340 U.S. 523, (1951) (holding that ambiguities involving maintenance and cure benefits be construed in favor of the ill or injured seaman).

Contrary to the ruling of the Third Circuit and in direct conflict with the decisions of this Court, it is well settled that no deductions from the wages of a seaman are permissable except as expressly provided by statute. See, *Johnson v. Isbrandtsen Co.*, 91 F. Supp. 872 (D.C.Pa. 1950), aff'd 190 F.2d 991 (3rd Cir. 1952), aff'd 343 U.S. 779, (1952). Indeed, in order to leave no ambiguity in its decision, the *Johnson* Court emphasized this point in the following language:

> It thus remains for the courts to determine what are the deductions or set-offs for derelictions of duty that are listed by Congress, rather than to determine which of the deductions or setoffs once known to the general maritime law that Congress has failed to exclude. Congress, in effect, has excluded all of them except those which it has listed affirmatively. *Id.*

Transportation or repatriation expense is not one of the deductions expressly provided for by Congress. Moreover, on March 1, 1982, the respondent was under no obligation to pay for the repatriation expense of the petitioner. The obligation to repatriate the petitioner rested with the Government of the

United States, which did not, through the U.S. Consul or any other competent authority, authorize the respondent to repatriate petitioner four and a half months later.

In order to legally deduct transportation expense from the wages of a seaman discharged in a foreign port, the master must show express consent by the seaman, a duty to pay the repatriation expense on account of the seaman or an emergency circumstance. *American Foreign S.S. Co. v. Matise,* 423 U.S. 150, (1975); *Escobar v. SS Washington Trader,* 640 F.2d 1063 (9th Cir. 1981); *Korims v. Sea-Land Services, Inc.,* 490 F. Supp. 418 (S.A.N.Y. 1980).

The petitioner was discharged in a foreign port. The master or owner of the vessel did not comply with their statutory duty towards the petitioner and failed to tender petitioner's wages to the United States Consul or place the wages in escrow. Additionally, prior to the discharge of petitioner on March 1, 1982, he was a member of the crew of the respondent's vessel for more than a year. The crew list clearly carries the petitioner's permanent address in the United States and respondent had been in possession of this information since December 15, 1981. There was, therefore, no justification for withholding the wages of the petitioner after March 5, 1982. It is this type of conduct that this Court vehemently disapproved of when it said,

> "In an effort to prevent shipowners from unlawfully withholding wages of seamen and thereby unjustly enriching themselves while wrongfully denying the seamen the benefits of their labor, the Congress of the United States enacted into law this statute aimed to protect seamen from the harsh consequences of arbitrary and unscrupulous actions of their employers." *Collie v. Fergusson,* 281 U.S. 52, 55 (1930).

Perhaps more troublsome are the consequences of the Third Circuit's decision on an ingrained national policy to protect seamen. The petitioner is a member of a protected class and the remedies provided by the legislature and as interpreted by this Court extend to him by virtue of his status. The decision of the Third Circuit authorizes a shipowner to arbitrarily withhold the wages of a seaman and to subsequently make unauthorized deductions from these wages in direct contravention of statutory mandates.

The decision reduces the "sufficient cause" requirement of 46 U.S.C. 10313 (g) to "any cause". Such a decision grant shipowners and masters the right to fabricate causes upon which to discharge seamen and withhold their wages*. However, a careful reading of the legislative history of the statute indicates that sufficient cause, as used in this statute, is either direct, indirect or remote. It would clearly be a sad day for the American seaman if every "cause" justifies the withholding of his wages by the master or shipowner.

Sufficient cause is not synonymous with discharge for cause. A seaman may be discharged for cause but that cause may not be necessarily sufficient to withhold his wages. In the case at bar, the alleged cause (reimbursement of transportation expense) for withholding the wages of the petitioner is not only derivative but too remote in time. The deductions were made four and a half months after the petitioner was discharged from the vessel. On March 1, 1982, when petitioner was discharged, there was no dispute regarding his entitlement to his wages. Indeed, his pay voucher clearly indicates that petitioner was entitled to $876.00.

Another unfortunate effect of the Third Circuit's decision is the tacit ruling that the incarceration of an American seaman in a foreign port by itself is sufficient cause to withhold his wages. Such a ruling would have devasting consequences. In the instant case, the petitioner was incarcerated for four and a half months. The next victim may be imprisoned for life or killed in jail in a foreign port. Under the decision of the Third Circuit, a shipowner could withhold and make use of the earned wages of the labor of a seaman indefinitely at his expense and the expense of his family or legal representatives.

Under the commands of 46 U.S.C. 10313 (f), the master shall pay the balance of wages due a seaman within four days after the seaman is discharged. Petitioner was discharged on March 1, 1982 from the respondent's vessel and was, therefore, entitled to

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*Presently pending in the Third District are cases involving questionable charges against sailors. Certain shipping companies have carried the implication of the Third Circuit failure to hear the Collins case one step further. They manufacture charges against sailors, discharge them and then bring suit against them for misconduct.

his wages on March 5, 1982. In the alternative, where a seaman is discharged and will not be paid his wages until the end of the permissible delay period (four days) under the statute, he is entitled to one-third of his wages. *See,* 46 U.S.C. 10313 (f) (1983). The failure of the shipowner or the master to pay the petitioner within the permissible delay period or to tender one-third of his wages on March 1, 1982, constitutes a violation of this statute and invokes the application of 46 U.S.C. 10313 (g). The decision of the Third Circuit deprives the petitioner of the statutory remedies accorded him by the legislature and as interpreted by this Court. *See, Griffin v. Oceanic Contractors, Inc.,* 454 U.S. 1052 (1983).

The decision of the Third Circuit is deeply flawed and comports with it an unwarranted retreat from the national policy of protecting seamen. This statute has just been refined and revised by the Congress of the United States in August of 1983. If Congress thought a retreat from previous policy was necessary, such a change would have been made. On the contrary, the Drafting Committe stated:

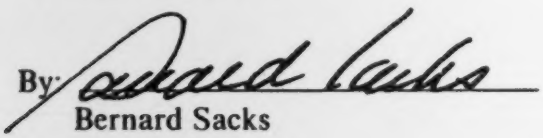
> There is no substantive change of a controversial nature intended to be made by [sic] S. 46. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of older judicial decisions and alter interpretations . . . In a codification statute, however, the courts uphold the contrary presumption: no change in law is intended unless clearly expressed. *Fourco Glass Co. v. Transmirra Products Corp.,* 353 U.S. 222 (1957); *Tidewater Oil Co. v. United States,* 409 U.S. 151 (1953); *Muniz v. Hoffman,* 422 U.S. 454 (1975); *Senate Report,* No. 98-56, 98th Cong. 1st Sess., 10 (1983).

In view of the conflicts which the decision of the Third Circuit may engender, and considering that national uniformity is a trademark of our national maritime jurisprudence, this case deserves resolution by this Court. For these reasons, and since the Third Circuit provides no guidelines for its decision, and since that decision conflicts and departs from the decision of this Court in *Fergusson, Matise* and *Griffin, supra;* and creates an unjustified erosion of a well-established national maritime policy and precedence, this Court should grant certiorari to hear this case.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,
SACKS & BASCH

By: 
Bernard Sacks
Simon W. Tache

APPENDICES

9a

NO. 84-1414

FREDERICK L. COLLINS,

Appellant

v.

ANNDEP STEAMSHIP CORPORATION

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3-29-85
SALLY MRVOS
Clerk

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(C. A. No. 82-5284)
(Honorable John P. Fullam)

Submitted Under Third Circuit Rule 12(6)
February 25, 1985

Before: ADAMS, WEIS and WISDOM,* Circuit Judges

JUDGMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

Circuit Judge

ATTEST:

Sally Mrvos, Clerk

DATED: March 4, 1985

* Hon. John Minor Wisdom, United States Court of Appeals for the Fifth Circuit, sitting by designation.

Certified as a true copy and issued in lieu of a formal mandate on March 29, 1985.

Test: M. Elizabeth Ferguson
Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

Costs taxed in favor of appellee as follows:

Brief.....$140.00

96

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 84-1414

FREDERICK L. COLLINS,

Appellant

v.

ANNDEP STEAMSHIP CORPORATION

(C.A. No. 82-5284))

SUR PETITION FOR REHEARING
IN BANC

Present: ALDISERT, Chief Judge, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER and WISDOM* Circuit Judges,

The petition for rehearing in banc filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the Court in banc, the petition for rehearing in banc is denied.

BY THE COURT,

Circuit Judge

DATED: March 21, 1985

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3-21-85

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* As to panel rehearing only.